

7. An optometrist may offer a free or reduced fee eye examination. An advertised offer of a free or reduced fee eye examination shall not be contingent upon a resultant purchase of ophthalmic materials or services.

(d) In the event that an advertisement contains a statement with regard to an advertiser's refund policy, such policy shall clearly and conspicuously set forth all conditions including relevant time periods and dollar amounts to be refunded.

(e) An advertisement shall not state that the optometrist possesses professional superiority with regard to services or materials offered or with regard to apparatus, equipment or technology utilized by the optometrist unless such claims can be substantiated.

(f) When an advertisement contains information on professional credentials, it shall only contain the academic degrees and certifications from bona fide accrediting bodies.

1. The use of the titles of FAAO (Fellow American Academy of Optometry) and FCOVD (Fellow College of Optometrists in Vision Development) shall not be deemed to be a claim of professional superiority.

2. It shall be deemed to be deceptive advertising for an optometrist to utilize the terms "specialist," "specialty" or the substantial equivalent in any advertisement as defined by (a) above; provided, however, that nothing in this section shall prohibit an optometrist from utilizing such terminology as "practice limited to," where the advertising optometrist's practice is exclusively or primarily devoted to one or more of the recognized areas of optometric services, for example, practice limited to low vision services.

3. Nothing in this section shall preclude any truthful and nondeceptive statement in regard to experience in a particular area of optometry (for example, 10 years experience in contact lens fitting and dispensing).

4. Nothing in this section shall preclude any truthful and nondeceptive statement in regard to any residency or fellowship approved by any accredited school of optometry.

(g) For a period of not more than two years from the date of succession to the practice of another optometrist, an optometrist may use a telephone listing of such prior optometrist together with the words "succeeded by" or "successor to" or the substantial equivalent, and for the same time period may also use the prior optometrist's name in any advertisement.

(h) An optometrist may only be listed in the classified section of any directory under the classification entitled "Optometrist," "Doctor of Optometry," or "Optometric Physician." Such listing shall show the address or addresses for which an active license or certification has been issued to practice optometry in this State.

(i) Any optometrist whose license is either suspended or revoked shall not be permitted to advertise during the period of active suspension or revocation except to announce the closing of the optometrist's office and/or where the patient records may be available.

(j) It shall be an unlawful advertising practice for an optometrist to:

1. Guarantee that services rendered will result in cures of any optometric or visual abnormality;

2. Fail to retain a copy or duplicate of any advertisement for a period of three years following the date of publication or dissemination. Such copies or tapes shall be made available upon request by the Board or its designee; or

3. Fail to substantiate any objective material claim or representation set forth in an advertisement.

(k) An optometrist may use testimonial advertising provided that:

1. All testimonials involving a specific or identifiable procedure truthfully reflect the actual experience of the patient;

2. The optometrist shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Board, may be deemed professional misconduct;

3. Where an optometrist directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a clear, legible and readable manner in any advertisement as follows: "COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL"; and

4. The optometrist shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation, and a signed release indicating that person's willingness to have his or her testimonial used in the advertisement.

(l) An optometrist shall include his or her license and certification number in all advertisements.

R.1981 d.295, effective August 6, 1981.

See: 13 N.J.R. 233(a), 13 N.J.R. 519(a).

Amended by R.1989 d.252, effective May 15, 1989.

See: 20 N.J.R. 2361(b), 21 N.J.R. 1366(b).

Recodified as new 1.2 from old 1.9 and replaced old 1.2, "Announcements of office opening or association," which was repealed.

In (b), deleted language requiring that an advertisement includes statement regarding an optometrist's licensure.

In (c)2, deleted "and set forth in the same type size."

Deleted old (c)3 and 4 and recodified old (c)5 and 6 as new (c)3 and 4.

Added new (c)5 and 6 clarifying advertisement guidelines for the sale of optometric goods.

Deleted old (c)7 and 8 describing contact lens advertising and added new (c)7.

Deleted old (e) and recodified old (f)-(i) as new (e)-(h), adding additional language clarifying advertising requirements.

Added new (i) with language explaining sanctions regarding advertising by suspended or revoked licensed optometrists.

Amended by R.1989 d.552, effective November 6, 1989.

See: 21 N.J.R. 2467(a), 21 N.J.R. 3475(a).

In (j): Deleted old 1 on use of certain lights for advertising. Changed 2 to 1, adding 1i-iii. Changed old 3 to 2 and deleted old 4

and 5, regarding prohibition against use of unprofessional advertising or a medium that limits access to a closed class of optometrists. Changed old 6 and 7 to new 3 and 4.

Amended by R.1993 d.357, effective July 19, 1993.

See: 24 N.J.R. 4237(a), 25 N.J.R. 3232(a).

Petition for Rulemaking.

See: 26 N.J.R. 4707(c).

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Case Notes

Misleading advertising. See *In re Shack*, 177 N.J.Super. 358, 426 A.2d 1031 (App.Div.1981) certification denied 87 N.J. 352, 434 A.2d 95.

Generally, see Att'y Gen. Form. Op. 1977-No. 20.

Rules of the board of optometrists which prohibit any communication of information of the identity of any optometrist or firm employing optometrists in conjunction with any agreement offering optometric services at a stipulated fee or smaller than ordinary fees or which purports to offer discounts, inducements or advantages and prohibit the offering of optometric services at a fee less than the usual fee in consideration of a patient being associated with a third party plan were invalid. Atty.Gen.F.O.1980, No. 17.

13:38-1.3 Permissible business structures; referral fees

(a) As used in this section, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

“Associate” means a closely allied health care professional in the permissible business structure who is the licensee’s partner, employee, fellow shareholder or fellow member in that business structure.

“Board” means the New Jersey State Board of Optometrists.

“Closely allied health care professional” means an individual who provides professional services and is licensed in New Jersey by a professional or occupational licensing board or other State agency, in any of the following fields pursuant to N.J.S.A. 14A:17-3(b): optometry, dentistry, registered professional nursing, physical therapy, or any branch of medicine or surgery.

“Limited liability company” (LLC) means a business corporation organized in compliance with the Limited Liability Company Act, N.J.S.A. 42:2B-1 et seq., to engage in and carry on any lawful business, purpose, or activity, which combines the attributes of both corporation and partnership, and provides the limited liability generally associated with a corporation and the Federal tax treatment of a partnership.

“Limited liability partnership” (LLP) means an association of two or more persons to carry on as owners of a business for profit, which partnership is formed pursuant to an agreement governed by the laws of New Jersey, registered pursuant to N.J.S.A. 42:1-44 and in compliance with N.J.S.A. 42:1-45.

“Permissible business structure” means a sole proprietorship, partnership, including limited liability partnership, or corporation, including limited liability company, all of which are subject to the limitations of (b) below.

“Professional service corporation” means a business entity established pursuant to N.J.S.A. 14A:17-1 et seq., in which all shareholders are licensed by the State of New Jersey to render the same or a closely allied professional service.

“Referral” means the sending or directing of a person to any health care provider other than an associate for diagnosis, evaluation, treatment, or the furnishing of optometric or other health goods or services.

“Remuneration” means any salary, payment, distribution of income, dividend, interest income, loan, bonus, commission, kickback, bribe, rebate, gift, free goods or services of more than nominal value, discount, the furnishing of supplies, facilities or equipment, credit arrangement, and/or waiver of financial obligations.

(b) The following are permissible business structures which may offer optometric services in the State of New Jersey:

1. A sole proprietorship consisting of one licensed optometrist;
2. A partnership, including a limited liability partnership pursuant to N.J.S.A. 42:1-44 et seq., in which all partners are licensed optometrists or closely allied health care professionals;
3. A corporation established consistent with the provisions of the Professional Service Corporation Act (N.J.S.A. 14A:17-1 et seq.) in which all shareholders are licensed optometrists or a combination of licensed optometrists and closely allied health care professionals; and
4. A limited liability company established consistent with the provisions of the Limited Liability Company Act (N.J.S.A. 42:2B-1 et seq.), in which all members are licensed optometrists or a combination of licensed optometrists and closely allied health care professionals.

(c) Optometrists may be employed by a permissible business structure which includes one or more closely allied health care professionals, including at least one licensed optometrist provided that their professional practice is supervised and evaluated by a professional who is an optometrist or physician licensed by the State of New Jersey.

(d) Optometrists may engage in the practice of optometry, as a sole proprietor, partner, shareholder or member, in any permissible business structure in which they are not shielded from liability for their own breaches of professional duties, retain responsibility for the quality of care and appropriateness of their professional judgments, and are assured access to information and involvement in issues pertaining to quality of care, professional judgment, record-keeping, advertising practices, and the finances of the permissible business structure.

(e) Optometrists shall not receive, solicit, offer, or pay any remuneration as an inducement to make a referral or as compensation for a referral of a patient for a service, product, drug or device or to purchase, prescribe or recommend a service, product, drug, or device.

(f) Optometrists shall not participate in any arrangement or agreement, with any person other than an associate, whereby any remuneration received by that person in payment for the provision of space, facilities, equipment, products, drugs, personnel, marketing or management services used by the optometrists is to be determined or calculated as a fixed percentage of, or otherwise dependent upon, the income or receipts derived from the practice of optometry. Nothing in this subsection shall preclude an optometrist from entering into a bona fide profit sharing plan or retaining the services of a collection agency.

(g) Any violations of (b) through (f) above shall be deemed professional misconduct pursuant to N.J.S.A. 45:1-21(e).

New Rule, R.2000 d.178, effective May 1, 2000.
See: 31 N.J.R. 3041(a), 32 N.J.R. 1620(a).

Former N.J.A.C. 13:38-1.3, Optometric practice under assumed names and disclosure of practitioner names, recodified to N.J.A.C. 13:38-1.4.

Case Notes

Administrative rule promulgated by the State Board of Optometrists which prohibited optometrists from entering agreements with any person, other than an associate, in which remuneration received by that person was to be determined as a fixed percentage of income derived from practice of optometry, conflicted with provision of Consumer Access to Eye Care Act purportedly authorizing it, and was invalid; statute in question generally permitted practice of optometry in a rented location in a retail or commercial store, and only within that context forbade an arrangement in which landlord could control optometrist's professional judgment. In re Adoption of N.J.A.C. 13:38-1.3(f) by the State Board of Optometrists, 775 A.2d 629 (2001).

13:38-1.4 Optometric practice under assumed names and disclosure of practitioner names

(a) Except as may be authorized by the Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., a licensed optometrist shall not practice under a name other than his or her own.

(b) A licensed optometrist who is also an officer of a professional service corporation which renders optometric service or sells ophthalmic materials shall:

1. In all advertising placed by such corporation cause to be conspicuously disclosed the name of at least one corporate officer who is licensed to practice optometry within this State;

2. Cause the names of all optometrists who render optometric services in connection with such corporation to be displayed in a conspicuous place at the entrance to the premises from which optometric services are rendered.

3. File with the Board of Optometrists by March 31 of each year a copy of that report required to be filed pursuant to N.J.S.A. 14A:17-15 showing the names and post office addresses of all shareholders, directors, and officers of such corporation. In addition thereto, the report shall include the names and post office addresses of all licensed optometrists employed by the corporation.

(c) It shall be the joint and several responsibility of all corporate officers holding licenses to secure compliance with this section.

(d) In all advertisements for optometric materials and services at a particular location or group of locations, the name and license number of at least one licensee responsible for optometric practice at the individual location or group of locations shall be disclosed. Any licensee's name appearing in an advertisement shall be immediately followed by one of the following designations: O.D., Optometrist, Doctor of Optometry, or Optometric Physician.

(e) A sole practitioner of optometry and all licensed optometrists offering services as partners in a partnership shall cause the names of all licensees offering optometric services in connection with the sole proprietorship or the partnership to be displayed in a conspicuous place at the entrance to the premises from which optometric services are rendered. If the premises contain more than one office, the names of all optometrists who render optometric services in connection with such sole proprietorship or partnership, at that particular location, shall be visible to the public and displayed in a conspicuous place at the entrance of the outer office.

R.1981 d.295, effective August 6, 1981.

See: 13 N.J.R. 233(a), 13 N.J.R. 519(a).

Amended by R.1989 d.252, effective May 15, 1989.

See: 20 N.J.R. 2361(b), 21 N.J.R. 1366(b).

Recodified as new 1.3 from old 1.10 and replaced old 1.3, "Optometrist presumed responsible for advertisements," which was repealed.

In (b)3, added "post office" before address.

In (d), added language elaborating on requirements for advertisements of optometric goods and services to include names of responsible optometric practitioners.

Petition for Rulemaking.

See: 26 N.J.R. 4707(c).

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Amended by R.1998 d.91, effective February 17, 1998.

See: 29 N.J.R. 308(a), 29 N.J.R. 1253(a), 30 N.J.R. 698(a).

In (d), added "or Optometric Physician".

Recodified from N.J.A.C. 13:38-1.3 by R.2000 d.178, effective May 1, 2000.

See: 31 N.J.R. 3041(a), 32 N.J.R. 1620(a).

SUBCHAPTER 2. GENERAL RULES OF OPTOMETRIC PRACTICE

13:38-2.1 Minimum examination; record of conditions

(a) Prior to prescribing eyeglasses or contact lenses for a patient, the licensee shall perform the following procedures and shall duly record the findings:

1. Complete history;
2. Entrance visual acuity findings;
3. Complete examination of the external eye and adnexae;
4. Complete examination of the internal parts of the eye;
5. Corneal measurements taken at the time of the original examination and as subsequently needed in the professional judgment of the optometrist;
6. Objective refractive findings;
7. Subjective refractive findings and acuities;
8. Evaluation of ocular motility and status of binocularity;
9. Color vision testing at the time of the original examination and as subsequently needed in the professional judgment of the optometrist;
10. Visual fields screening on all patients unless contraindicated in the professional judgment of the optometrist or by lack of the patient's cooperation;
11. Tonometry on all patients unless contraindicated in the professional judgment of the optometrist or by lack of the patient's cooperation; and
12. Complete examination of the anterior segment of the eye using a biomicroscope (slit-lamp) or other equipment with equivalent technological capabilities.

(b) Procedures (a)3, 4, 7 and 12 above shall be performed only by the optometrist.

(c) Where any form of contact tonometry is used in procedure (a)11 above, only the optometrist shall perform the procedure.

(d) The optometrist may delegate the performance of procedures (a)5 and 6 above only when automated electronic devices are used.

(e) The accuracy of the findings for all of the procedures in (a) above shall be the exclusive responsibility of the examining optometrist(s).

(f) Nothing contained in this chapter shall be construed to prohibit vision screening under the direct supervision of an optometrist for the purpose of determining the advisability of a complete optometric examination. For purposes of this section, "direct supervision" means the continuous physical presence of the optometrist who is in a supervisory status at the office location and who is available on-site for consultation, guidance, and instruction during the performance of any delegable procedures by ancillary personnel.

Amended by R.1983 d.511, effective November 7, 1983.

See: 15 N.J.R. 1234(a), 15 N.J.R. 1866(b).

Deleted old text and added new text.

Amended by R.1985 d.60, effective February 19, 1985.

See: 16 N.J.R. 3289(a), 17 N.J.R. 467(a).

(b) added.

Amended by R.1989 d.252, effective May 15, 1989.

See: 20 N.J.R. 2361(b), 21 N.J.R. 1366(b).

In (b), added "7" to section (a) procedures references. Petitions for Rulemaking.

See: 26 N.J.R. 2812(c); 27 N.J.R. 773(a).

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Amended by R.1999 d.143, effective May 3, 1999.

See: 30 N.J.R. 1193(a), 31 N.J.R. 1201(a).

Rewrote the section.

Cross References

Preceptees, see N.J.A.C. 13:38-2.12.

13:38-2.2 Minimum equipment and instrumentation

(a) For the proper performance of a minimum examination as required by N.J.A.C. 13:38-2.1, the following equipment and instrumentation shall be maintained in an optometrist's office:

1. Ophthalmoscope;
2. Instrument for the objective measurement of the refractive status of the eye;
3. Instrument to measure the radius of the curvature of the cornea;
4. Instrument, including but not limited to, trial frame with test lenses and auxiliary prisms, for the measurement of the subjective refractive status of the eye;
5. Instruments to test for stereopsis and fusion;
6. Instruments or charts to measure distance and near visual acuities;
7. Instruments to test color vision;
8. Equipment to measure central and peripheral visual fields;
9. Instruments to measure intraocular pressure;
10. Biomicroscope (slit-lamp), or other equipment with equivalent technological capabilities.

Amended by, R.1980 d.202, effective May 6, 1980.

See: 12 N.J.R. 90(b), 12 N.J.R. 348(d).

Amended by R.1985 d.60, effective February 19, 1985.

See: 16 N.J.R. 3289(a), 17 N.J.R. 467(a).

Substantially amended.

Petition for Rulemaking.

See: 26 N.J.R. 2812(c).

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

13:38-2.3 Records of examinations and prescriptions; computerized records

(a) Licensees shall prepare contemporaneous, permanent professional treatment records and shall also maintain records relating to billings made to patients or third-party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment of services rendered. Treatment records shall be maintained for a period of not less than seven years from the date of the most recent entry.

(b) To the extent applicable, professional treatment records shall contain, in addition to those findings required by the minimum examination as set forth in N.J.A.C. 13:38-2.1:

1. The dates of all patient visits, examinations, and treatments;

2. The patient complaint or reason for visit;
3. The patient history;
4. The findings of the examination;

8. Failure of the student or preceptor to follow the provisions of this section shall constitute a violation of N.J.S.A. 45:1-14 et seq.

R.1979 d.276, effective July 18, 1979.

See: 11 N.J.R. 252(b), 11 N.J.R. 402(a).

Amended by R.1985 d.60, effective February 19, 1985.

See: 16 N.J.R. 3289(a), 17 N.J.R. 467(a).

(a)4: added text "Such preceptor . . . least five years."

Amended by R.1989 d.252, effective May 15, 1989.

See: 20 N.J.R. 2361(b), 21 N.J.R. 1366(b).

Renumbered old 2.12 as new 2.11 with no change in text.

Recodified from 13:28-2.11 by R.1992 d.443, effective November 2, 1992.

See: 24 N.J.R. 2802(a), 24 N.J.R. 4058(a).

No change in text.

13:38-2.13 Independent doctor of optometry

(a) For the purpose of N.J.S.A. 45:12-9.12 and this chapter, in order to perform as an independent doctor of optometry, a licensee shall:

1. Take no instruction from an ophthalmic dispenser with regard to any aspect of optometric practice and retain authority to exercise professional judgment within accepted standards of professional care with regard to skill, diligence in examinations, allocation of time for professional services, and diagnosis and treatment of patients;

2. Take no instruction from a landlord with regard to any aspect of optometric practice and lease space on the basis of a written lease and only where rent is a fixed fee determined by the fair market value, is for a regular term and not for sporadic use of the space, is not contingent upon patient fees, the number of patients, or the number or type of optometric services;

3. Maintain a separate telephone number;

4. Enter into a written agreement providing that the optometrist shall furnish and be responsible for all advertising for optometric services, materials and fees by that optometrist. Any optometrist advertisement for optometric services, materials and fees by that optometrist which appears near or next to the advertisement of any other entity shall be clearly delineated and set apart by bold lines or a box;

5. Employ, supervise, pay and maintain responsibility for training assistants and employees. If any personnel services are included as part of a rental agreement, such as a receptionist's services, the terms shall be included in the written lease;

6. Furnish his or her own equipment, instruments, and materials; or if these are leased, it shall be for fair market value and the terms shall be included in a written lease;

7. Establish all patient fees for ophthalmic materials and services;

8. Maintain his or her own patient treatment and billing records, separate and apart from any ophthalmic

dispenser records, and be responsible for the confidentiality and security of all patient treatment and billing records, whether electronic or hard copy;

9. Establish hours of availability of optometric services and retain responsibility for suitable coverage in an emergency, during vacation, or during hours when the office is closed;

10. Display registration certificate(s) and signs so as to be read on the outside of the office as required by N.J.S.A. 45:12-8.

New Rule, R.2000 d.496, effective December 18, 2000.

See: 31 N.J.R. 3586(a), 32 N.J.R. 4453(a).

13:38-2.14 Sexual misconduct

(a) The purpose of this section is to identify for optometrists licensed by the Board of Optometrists the types of conduct which shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Licensee" means any person licensed to practice optometry in the State of New Jersey.

"Patient" means any person who is the recipient of a professional service rendered by a licensee for purposes of diagnosis, treatment or consultation relating to treatment. "Patient" for purposes of this section also means any person who is the subject of a professional examination even if the purpose of that examination is unrelated to treatment.

"Patient-physician relationship" means an association between an optometric physician and a patient wherein the optometrist owes a continuing duty to the patient to be available to render professional services consistent with his or her training and experience. The performance of any professional service including, but not limited to, the issuance of a prescription or authorization of a refill of a prescription is deemed to be a professional service and evidence of a patient-physician relationship.

"Sexual contact" means knowingly touching a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the patient's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient's body into or near the genital, anal or other opening of the other person's body. "Sexual contact" does not include the touching of a patient's body which is necessary for the performance of a generally accepted and recognized optometric procedure.

“Sexual harassment” means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee’s activities or role as a provider of optometric services, and that either: is unwelcome or offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. “Sexual harassment” may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee.

“Spouse” means either the husband or wife of the licensee or an individual in a long-term committed relationship with the licensee.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-physician relationship. The patient-physician relationship is considered ongoing for purposes of this section in all contexts unless:

1. Professional services are actively terminated by way of written notice to the patient and is documented in the patient record; or
2. The last professional services were rendered more than one year ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-physician relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is related to legitimate patient needs. Such discussion shall not include disclosure by the licensee of his or her own intimate sexual relationships.

(f) A licensee shall not engage in sexual harassment whether in a professional setting such as an office, hospital, health care facility, or outside of the professional setting.

(g) A licensee shall not engage in any other activity, such as, but not limited to, voyeurism or exposure of the genitalia of the licensee, which would lead a reasonable person to believe that the activity serves the licensee’s personal prurient interest or is for the sexual arousal, the sexual gratification or the sexual abuse of the licensee or patient.

(h) Violation of any of the prohibitions or directives set forth in (c) through (g) above shall be deemed to constitute gross or repeated malpractice pursuant to N.J.S.A. 45:1-21(c) or (d) or professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(i) Nothing in this section shall be construed to prevent a licensee from rendering optometric examinations or treatment to a spouse, providing that the rendering of such service is consistent with accepted standards of optometric care and that the performance of optometric services is not utilized to exploit the patient for the sexual arousal or sexual gratification of the licensee.

(j) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the patient.

New Rule, R.2002 d.81, effective March 18, 2002.
See: 33 N.J.R. 3733(a), 34 N.J.R. 1269(a).

13:38-2.15 Excessive fees

(a) The New Jersey State Board of Optometrists shall review information and complaints concerning allegations of excessive fees charged by licensees of the Board. This section is not intended to impinge upon the strong public policy in favor of competitive, free enterprise economy embodied in the antitrust laws of the United States and the State of New Jersey. The Board shall consider comparable fees charged by licensees not under inquiry that are in a similar type, mode and setting of practice, a similar geographic and economic area, and similar years in practice to the minimum extent necessary to render a determination as to whether a fee is excessive.

(b) A licensee of the New Jersey State Board of Optometrist shall not charge an excessive fee for services. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances.

(c) Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following:

1. The time and effort required;
2. The novelty and difficulty of the procedure or treatment;
3. The skill required to perform and interpret the procedure or treatment properly;
4. Any requirements or conditions imposed by the patient or by the circumstances;
5. The nature and length of the professional relationship with the patient;
6. The experience, reputation and ability of the licensee performing the services; and